

## Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:B01

PLR-118725-07

Date:

October 16, 2007

### Legend:

Trust =

X =

D1 =

Annuity =

Charities =

D2 =

D3 =

State =

Dear :

This letter responds to a letter dated April 13, 2007, and related correspondence, submitted on behalf of the Trust by its authorized representative, requesting a ruling under § 691 of the Internal Revenue Code.

### FACTS

The information submitted states that X created the Trust on D1. X died on D2. At the time of X's death, X owned a non-qualified deferred annuity contract (Annuity), the beneficiary of which is the Trust. X purchased the Annuity after October 21, 1979. At the time of X's death, the Annuity had not reached its starting date. X had not received any payments pursuant to the Annuity prior to X's death. The Trust has not included any amount in its gross income or taken any income tax deduction with respect to the Annuity for any taxable year.

The Trust provides that upon the death of X, all of the assets of the Trust shall be distributed and Charities will each receive a portion of the residue of the Trust. On D3, the Trustees of the Trust assigned the Annuity, which represented the collective residuary interests of Charities in the Trust, to Charities. The Trust does not specifically provide that the Trustees of the Trust shall have the power to make in-kind or non-pro rata distributions, but it provides that the Trustees shall have the powers provided under State law. State law provides that a trustee shall have the power to make in-kind or non-pro rata distributions.

### LAW AND ANALYSIS

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For these purposes, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(b) of the Income Tax Regulations provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(3) provides that if a trust to which is bequeathed a right of decedent to certain payments of income terminates and transfers the right to a beneficiary, only the beneficiary must include such income in gross income when received. If the transferee described in § 1.691(a)-4(b)(3) transfers his right to receive the amounts in the manner described in § 1.691(a)-4(a), the principles contained in § 1.691(a)-4(a) are applied to such transfer. On the other hand, if the transferee transmits his right in the manner described in § 1.691(a)-4(b), the principles of § 1.691(a)-4(b) are again applied to such transfer.

Rev. Rul. 2005-30, 2005-1 C.B. 1015, holds that if the owner-annuitant of a deferred annuity contract dies before the annuity starting date, and the beneficiary receives a death benefit under the annuity contract, the amount received by the beneficiary in excess of the owner-annuitant’s investment in the contract is includible in the beneficiary’s gross income as IRD within the meaning of § 691. Rev. Rul. 2005-30 applies to deferred annuity contracts purchased on or after October 21, 1979.

## CONCLUSION

Based solely on the facts and representations submitted, we conclude that the assignment of the Annuity to Charities in satisfaction of Charities’ residuary interests in

the Trust will not be a transfer within the meaning of § 691(a)(2). Therefore, only Charities will include the amounts of IRD from the Annuity in their gross income when the distribution or distributions from the Annuity are received by Charities.

Except as set forth above, no opinion is expressed or implied as to the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to the qualification of Charities under § 501(c)(3).

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being mailed to your authorized representative.

Sincerely,

Audrey W. Ellis  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter  
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